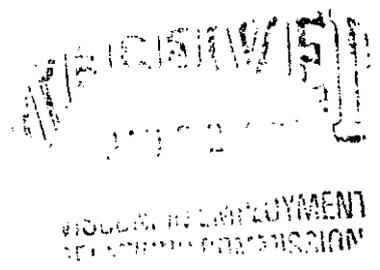


STATE OF WISCONSIN

Before the Interest Arbitrator



|                               |   |                      |
|-------------------------------|---|----------------------|
| In the Matter of the Petition | ) |                      |
|                               | ) |                      |
| of                            | ) | Case 451             |
|                               | ) |                      |
| Racine Police Association     | ) | No. 52440 MIA-1981   |
|                               | ) | Decision No. 28363-A |
| For Final and Binding         | ) |                      |
| Arbitration Involving Law     | ) |                      |
| Enforcement Personnel in the  | ) |                      |
| Employ of                     | ) |                      |
|                               | ) |                      |
| City of Racine                | ) |                      |
| (Police Department)           | ) |                      |

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**APPEARANCES**

For the Association:

Robert K. Weber, Attorney  
Richard T. Little, Consultant

For the City:

William R. Halsey, Attorney

**PROCEEDINGS**

On May 25, 1995 the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to Section 111.77 of the Municipal Employment Relations Act, to resolve an impasse existing between Racine Police Association, hereinafter referred to as the Association, and the City of

Racine Police Department, hereinafter referred to as the Employer.

The hearing was held on September 7, 1995 in Racine, Wisconsin. The Parties did not request mediation services and the hearing proceeded. At this hearing the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses and to make such arguments as were deemed pertinent. The Parties stipulated that all provisions of the applicable statutes had been complied with and that the matter was properly before the Arbitrator. Briefs were filed in this case and the record was closed on January 10, 1996 subsequent to receiving notice that reply briefs would not be filed.

### ISSUE

#### Cost of Living

##### City Position

Fold the current of living adjustment, including that due 1/1/94, into the base rate, and, henceforth, eliminate the cost of

##### Association Position

Continue the cost of living provision by updating the language by 2 years from the expired contract. 1% increase on

living provision from the  
Collective Bargaining  
Agreement. Wage increases  
1/1/94 - 5%; 1/1/95 - 5%.

1/1/94 and 1% increase on  
1/1/95.

#### Pension Payments

Amend to provide that the  
City will pay 100% of the  
state mandated employee  
contribution up to 7% of  
the salary of each parti-  
cipating employee.

The City shall pay an  
amount equal to 7% of the  
salary of each member into  
the Wisconsin Retirement  
Fund. These contributions  
shall not be considered  
municipality contributions  
but employee contribu-  
tions. If such contribu-  
tions cannot be consi-  
dered to have been made by  
the employee, the payments  
by the City to said Fund  
affected by such determin-  
ation shall be terminated  
and the City freed of any  
further obligation to make  
such payments.

Clothing Allowance

Increase clothing allowance  
by \$25 per year.

No change in clothing  
allowance.

Attendance Incentive Program

Establish an attendance  
incentive program in accord-  
ance with the City's final  
offer.

No attendance incentive  
program.

CITY POSITION

The following represents the arguments and contentions made on behalf of the City:

The issue with respect to the pension contributions evolves from Article XI of the contract which provides for the City to pay into the plan on behalf of employees in addition to the employer mandated contributions. The proposed change arose due to litigation with the Fire Department employee union. Historically, the City has paid the employee share through negotiating changes in the contract as the state has increased the mandated contribution. The City proposed changes to provide that the City will pay 100% of the state mandated employee contribution up to 7% of the salary. The Association has

stipulated than all of the other City/Union contracts contain the language that the City is requesting in this proceeding. The contract with the firefighters in the City of Racine was subject to an interest arbitration. In that award the arbitrator stated that the pension matter by itself requires a decision for the employer's final offer. However, the Association's final offer was adopted due to an insurance proposal included in the City final offer. The arbitrator in that matter felt that the City had the unilateral right to change the contribution level. The Parties then arbitrated the grievance with a different arbitrator after the City reduced its contribution in accord with a reduction in the mandated figure. The Firefighters' Union did prevail in that matter. The president of the Police Association testified that he will file a grievance on this issue if the Association prevails in this interest arbitration. The City states that it has contributed 6.5% on behalf of employees in 1994 and intends to contribute 6.1% in 1996.

If the Association prevails, this would be very expensive for the City. Association Exhibit #49, which does not include COLA payments or overtime, shows a salary cost of \$6.8 million. The City would, therefore, have to pay an additional \$34,000 as a pension contribution for 1995, and this figure is artificially low as it does not include COLA and overtime payments. Using the \$6.8 million for 1996, the City additional liability would be in excess of \$61,000. When COLA and overtime payments are added in,

this issue could easily cost the City in excess of \$100,000 if the language is not changed. The City believes that there is no justification for being compelled to contribute monies that only benefit employees who quit prior to pension eligibility.

The driving issue in this dispute is the City proposal to eliminate the cost of living language in Article XXXIII of the contract. This is a unique interest arbitration case in that the City proposal is for a significantly higher rate than that proposed by the Association. Even the Association's exhibits establish that the City proposal is to continue having Racine police officers paid the highest rate in the state.

No other City union receives cost of living adjustments at this time. The firefighters' contract for 1994-96 eliminated the cost of living payment. The City offer here is 5% increase each year of the contract, while the firefighters received 5% on 1/1/94 and 5.5% on 1/1/95. The extra 1/2% was granted for two reasons - the firefighters agreed to the City insurance modifications, and the firefighters' contract is for three years. The settlement that was reached with the firefighters was offered to the Police Association. That proposal was rejected. The City then dropped the insurance modifications from the final offer that is being arbitrated. The City has proposed eliminating the cost of living clause during negotiations for several years. The finance committee and the mayor issued bargaining instructions

not to settle voluntarily without eliminating the cost of living provisions. When cost of living is in the contract, wages in essence are not bargained. The City proposal is to bring wage discussions back to the bargaining table.

The Association put external comparables into the record. No other police union receives cost of living adjustments similar to the Racine contract. The Janesville contract has a very limited cost of living provision. The City proposal further maintains the Racine police officers' #1 salary position. It also brings the contract into conformity with the internal and external comparables. The Association noted that the bargaining with the Department of Public Works employees in the early 1980s involved a significant guaranteed increase in return for buying out the cost of living provision. However, the City notes that the CPI figures during that time were in the 12-13% range. The City wage offer is approximately double the current CPI data. Therefore, the City proposal to eliminate cost of living payments is reasonable. Only then will the City be able to engage in real wage bargaining. The City proposal will result in Racine police officers being paid \$2.46 an hour above the average of the comparables. The City is willing to make this significant wage offer in order to justify the elimination of automatic unlimited cost of living raises.

The City states it is also important to note that members of this union receive health insurance at no cost, and the City is willing to continue paying 100% of the health insurance cost. Cost of living increases are heavily influenced by the cost of health care. Therefore, there is no justification for the Racine police officers to receive COLA increases while enjoying free health insurance benefits. The City's final offer also contains increases in the clothing allowance and establishes an attendance incentive program which is designed to curb the excessive absentee rate of this department. During 1992-93 the City lost the equivalent of 10 officers for a one year period to sick leave. This program can be worth up to \$400 per year to each police officer, which represents a 1% increase in base wages.

The City respectfully urges that the Arbitrator adopt its final offer. The pension issue is an important and costly one. It is hard to envision an argument in support of the City being forced to contribute \$100,000 to the pension fund that will not benefit association members that retire from the Racine Police Department. Pension plans are designed and negotiated to be retirement benefits, and the City proposal will not change that. With respect to the cost of living issue, the internal and external comparables favor the City. The City wage offer is approximately double the latest CPI figure. The City wage offer continues the practice of having police officers being the highest paid in the state. The City is willing to give these large wage increases in return for the ability to effectively

bargain wages in the future. The City offer is both fair and reasonable and should be adopted as the 1994-95 labor agreement.

### Association POSITION

The following represents the arguments and contentions made on behalf of the Association:

It would appear that the Parties' positions are reversed from what would normally occur in an interest arbitration case. However, the City is clearly expecting that the long term effect of the elimination of the cost of living provision will amount to a cost savings versus the percentage increases it will offer in the future. The Association asks that the Arbitrator consider the following facts: the difficulty in budgeting cost of living was not what triggered the City's final offer because the City rejected a proposal on the fold-ins that would have resolved the problem. Neither party's final offer maintains the traditional parity between the police and fire departments. If the City actually experiences a levy limit or a local economic problem in the future, new legislation permits the City to effectively address those issues in the 1996-97 contract. The COLA buy-out proposed by the City is less than 1% when the savings under its pension proposal is included. Because of those reasons and the

legislative criteria, the Association has made the more reasonable final offer.

With respect to the legislative criteria, lawful authority is a non-issue. With respect to the stipulations of the Parties, the compromise clothing allowance agreement removes item #3 from the City's offer. The Parties stipulated to the external comparables and the Association believes that its Exhibit #6 should be accorded greater weight because it is based on a ten-year history of those comparables. The Parties also stipulated to the actual costing methodology and computations.

Regarding the interest and welfare of the public, the City's own witness testified that the Employer has the present financial ability to meet either Party's final offer. Future implications of those offers are discussed at greater length throughout this brief. The cost of living language has been included in the City/Association labor agreements for more than 20 years. The City did not buy out the cost of living language for the police and fire units when it did so more than a decade ago for the DPW employees. For more than 10 years since that time, the City has continuously maintained the cost of living clause, and the police unit has in turn always reached a voluntary agreement. The City acknowledged the beneficial effect that the cost of living provision has had on negotiations. The City has compensated its police officers according to a different

formula than its other public employees for a long period of time. This conforms to a nationwide acknowledgement that law enforcement is the one tax based cost that the public is still willing to support. A number of citations were provided in support of the Association's position. The Association also notes that protective services were excluded from the legislature cap on salaries such as those imposed on teachers.

Ironically, the cost of the Association's final offer package is less than that of the City for the pertinent period. In the future it may be that, if cost of living clause is continued in successor agreements, the Association's final offer could be more costly. However, for the foreseeable future inflation is low and the price of goods and services is relatively stable. It is agreed by the Parties that the Association's proposal will actually cost less than the City's proposal for the contract term in question. If the cost of living provision poses economic hardship in the future, the weight attributed to the statutory factors will be available to the City for the next and subsequent bargaining periods. Therefore, if the interest and welfare of the public is at stake, in addition to maintaining a high level of morale and efficient police services, the public is well served by the Association's offer.

The City's buy-out proposal is in the range of a 1% increase. The City has the burden of showing a persuasive reason to effect such a drastic change after 20 uninterrupted years. The City has not met its burden of proof in this regard. Sick pay incentive is hardly meaningful and obviously would not be available to many bargaining unit members. The Association has shown a willingness to make an adjustment in the cost of living benefits which benefits the City during adverse economic periods. Therefore, the Association has shown that the City has failed to prove that the City is in need of financial relief or that it has offered a sufficient economic incentive to make its proposed sweeping change in longstanding cost of living benefits. Therefore, this factor should be given greater weight than the customary internal/external comparable factors.

With respect to internal and external comparables, comparisons to similar employees in similar communities is the single most important criterion. The external comparability factor is not dispositive in a case like this where the employer's wage offer is higher than the employee's. The Association concedes that the external comparables for the most part do not have comparable cost of living clauses. Janesville has a modified clause and Kenosha has a clause that has been frozen by mutual agreement for several years. The historical wage rate rank comparison demonstrated over the last decade shows that the Association's position has fluctuated from a low of 7

out of 10 to a high of 1st in 1991. For the two years of this contract, the City's final offer would place the Association 1st among its comparables for both years. The Association's offer would put employees first for 1994, but not necessarily for 1995. Thus, what is usually a dispositive factor in this case is a minor factor.

Regarding the internal comparables, the Association's offer is closer to the internal comparables and the City's higher offer. Even though the Association and the firefighters had COLA between 1983 and 1994, this unit has not dramatically outperformed the other bargaining units or even non-represented employees. There has not been parity between the police and firefighters units. Wage packages have been different in 1987, 1989 and 1990 and would be different again under either final offer. Arguments supporting parity between protective service bargaining units have been accorded great weight by arbitrators. The City's final offer will create disparity between the units short term. What will happen long term is impossible to predict. The Association's offer is closer to settlements of other city bargaining units and, therefore, favors its proposal.

Neither side presented any evidence regarding pay and benefits in private sector employment. In addition, both Parties have made final offers which exceed the current cost of living data. With respect to overall compensation, there are a

number of areas in which the Association's offer is favored. Particularly noted are health insurance premiums, holidays, longevity comparisons, and shift differential premiums. There have been no changes in the foregoing circumstances.

Regarding the catchall provisions, the Association notes that the productivity of the work force, Association Exhibit #9, shows that only three police departments decreased their overall work force over the last ten years, Racine being the only large municipality to do so. There has been a 7% increase in violent crime during that period. Racine is the second most violent community in the state. Therefore, police officers solved almost 8% more of the additional violent crimes assigned to them during that period. Six of ten comparable communities including Racine saw decrease in property offenses, and the department's clearance rate improved. Overall, the department's productivity increased. The City of Racine has held the line on costs by decreasing its work force. Therefore, the City can afford to pay the remaining officers under its traditional pay formula.

Regarding the bargaining history, the City and the Association have maintained the cost of living language for 20 years in both good and bad economic times. The Association has taken temporary freezes, or waived the percentage lift and has made other substantial concessions. Now that the general economic outlook is good, the City should not be permitted to buy

back the benefit at bargain basement prices. The City's offer is not more reasonable simply because it is higher. The City's current offer, while temporarily higher, eliminates its agreement for the first time in 20 years to pay cost of living adjustments.

Regarding the pension issue, the City's final offer is punitive and a take-away. The current language provides that the City shall pay an amount equal to 7%. The City's proposal states that the employee contribution paid by the City will be up to 7%. The genesis of this proposal was a firefighter grievance that stated that the City would be required to pay 7% as an employee contribution and not less than 7%. All public employees are required to belong to the Wisconsin Retirement Fund. That fund sets a contribution rate based on a percentage of employees' salaries. The Fund does not specify whether an employer must pay all or a certain percentage of the required contribution. The Fund leaves that issue to each municipality to establish through their collective bargaining agreements the share paid of the required contribution. The City is attempting to benefit in two ways: (1) lowering its immediate contribution, and (2) capping its future obligations at 7%. The Association discovered at the hearing for the first time that the City had not been contributing 7% to the Fund despite the award in the firefighter arbitration. Therefore, the City has already profited by unilaterally paying the minimum state mandated employee

contribution of 6.7% in 1992 and 6.6% in 1993. The City's current offer might be more reasonable if it did not include a cap. However, the proposal must be viewed in the overall context of its final offer. Therefore, the City's final offer is less when the pension contribution cutback is deducted.

It is the Association's position that its final offer is closer to the comparables for the period in question. It does not impact on the financial planning for the contract period because the actual cost is known. The City is simply not offering sufficient buy-out for the cost of living and pension changes. Therefore, it is the Association's offer that is most reasonable and it is that offer that should be accepted by the Arbitrator.

#### **DISCUSSION AND OPINION**

This Arbitrator has made it clear in other decisions that, when one side or the other wishes to deviate from the status quo of the previous collective bargaining agreement, the proponent of that change must fully justify its position and provide strong reasons and a proven need. This Arbitrator recognizes that this extra burden of proof is placed on those who wish to significantly change the collective bargaining relationship. In an absence of such showing, the party desiring the change must

show that there is a quid pro quo or that other comparable groups were able to achieve this provision without the quid pro quo. It is the Employer that wishes to alter the status of the collective bargaining relationship in this case. Clearly, the major issue between the Parties is the cost of living provision and to a lesser extent the pension proposals. There does not seem to be a problem concerning the third and fourth parts of the employer offer involving change in the uniform allowance and the absentee incentive plan.

Both sides have a vested interest in the elimination/continuation of the COLA clause - for the Employer's part, the ability to predict costs and to negotiate fully the wage issue; and for the Employees', part protection against runaway inflation which occurred in the not too distant past and the ability to concentrate on other areas besides wages in contract negotiations. Cost of living provisions generally appear in collective bargaining during times characterized by significant increases in the consumer price index, and, indeed, this provision first appeared during a time of significant cost of living pressure and has played a significant role in the relative wage standing of this bargaining unit. During the past several years, both employers and employees have enjoyed an unprecedented stability in the consumer price index as compared to recent labor relations history. Not only have we enjoyed relative year to year stability, but the increases in the CPI

have been significantly lower than those experienced during the late 70s and early 80s. The use of cost of living provisions in collective bargaining agreements has significantly lessened during the past ten years in both the public sector where it is indeed rare to encounter a cost of living provision in Wisconsin and in the private sector where cost of living provisions are generally found only with large bargaining units.

In this case the Employer wishes to eliminate the cost of living provision and is willing to offer a higher wage increase than has been requested by the Association in order to "buy out" this provision. The question before the Arbitrator is "Is this an appropriate quid pro quo for the elimination of this significant provision or has the Employer provided sufficient justification for this change?" This is a difficult decision since much of what would determine an appropriate quid pro quo will occur prospectively with this bargaining unit. However, given the higher increases offered, the internal and external comparables without any meaningful COLA provisions, and the number 1 wage rank of this unit among external comparables, the Arbitrator finds that the City has met at least the minimal criteria for a change in the status quo. This is particularly true since we are in a period of low inflation and high price stability with no upward price pressures anticipated in the immediate future. It is also arguably true that the CPI is not a true but is an overstated measure of living costs. Of note is

the fixed market basket approach which does not take into account changes in the buying patterns and consumption for items hardest hit by inflation. Nor does the CPI accurately measure housing costs, the largest single component of the index. The Arbitrator would note for the record that a decision in favor of the City would not preclude the Association from bargaining a cost of living provision in the future although the Arbitrator recognizes that this, again, would be a change in the status quo and would be subject to the criteria noted above. In addition, cost of living is one of the criteria mandated for consideration by Wisconsin interest arbitrators in fashioning awards. This is expressed by both the CPI and comparables. While this Arbitrator is reluctant to deviate from such a longstanding and important contract provision, the Arbitrator finds that the cost of living wage proposal of the City more nearly meets the statutory criterion and it is the City's position that is favored even when including the changes in productivity and overall compensation of the unit.

With respect to the pension proposal, this is even a closer call. The City for a significant period of time has agreed to pay an amount equal to 7% into the Wisconsin Retirement Fund. The reason for this provision is that 7% was the required employee contribution. In recent years those required contributions have decreased and, as the Employer noted, the retiree benefits will not change as long as the minimum

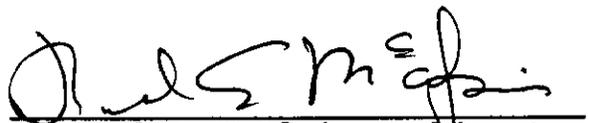
contributions are made. Only those employees who leave public sector employment prior to vesting would achieve any benefit by this additional amount, a significant expenditure, particularly during 1995 and to a greater extent in 1996. Further this Arbitrator believes that should the required employee contribution increase beyond 7% in the future, the practice of this Employer paying 100% of the required pension contribution will carry substantial and perhaps determinative weight in any future interest arbitrations. The payment of non-required amounts does not appear to this Arbitrator as an appropriate expenditure of the public funds and, since the Employer is willing to pay 100% of the required contribution and since that 100% is lower than the 7% cap in the City's language, at least for the period of time 1994, in 1995 and, indeed, in 1996, it is the Employer's proposal that more nearly meets the statutory criterion.

Regarding Employer proposals 3 and 4 involving uniform allowance and attendance bonus, the Arbitrator finds that both of these provisions favor the police officers of Racine and can find no reason why they should not be included in the final contract provisions.

AWARD

On the basis of the foregoing and the record as a whole, and after full consideration of each of the statutory criteria, the undersigned has concluded that the final offer of the City of Racine is the more reasonable proposal before the Arbitrator and directs that it, along with the stipulations reached in bargaining, constitute the 1994-1995 agreement between the Parties.

Signed at Oconomowoc, Wisconsin this 19th day of January, 1996.

  
Raymond E. McAlpin, Arbitrator